Land Use Law

CMP/REDEV 6260

Spring 2015  3 Credit Hours

BU C 107  Tues & Thurs  3:40-5:00

Instructor: Keith Bartholomew, J.D. – Associate Dean, College of Architecture + Planning; Associate Professor of City & Metropolitan Planning; former Associate Director, Wallace Stegner Center for Land, Resources and the Environment, S.J. Quinney College of Law; former staff attorney, 1000 Friends of Oregon, (see http://www.friends.org).

Introduction: The subject of urban planning in the U.S. can hardly be broached without directly incorporating some aspect of the American legal system. Our methods and processes for planning in cities and towns are not just about (hopefully) good ideas, but also about how those ideas become expressed in public policies that can, and will, be implemented. Whether those policies are substantive or procedural, distributive or regulatory, their implementation almost invariably involves some expression of what we commonly call “the law” (Anderson 2003).

At its core, the term law refers to the principles and norms of a community, as articulated by an authoritative source, that regulate behavior, the compliance with which is ensured by binding sanctions (Random House 1987). Thus, the laws that govern our society include many expressions of policy beyond the statutes passed by legislative bodies, such as Congress or state legislatures. Also included are the federal and state constitutions, the regulations and (sometimes) guidelines adopted by administrative agencies (e.g., EPA and DEQ), the orders issued by courts, and the ordinances and permit decisions adopted by local governments. This course will explore all of these types of law, as they are expressed in the modern practice of urban planning.

Teaching Approach: The course will be taught using materials and techniques common in American law schools. The primary text for the course will be a “case book,” containing excerpts of judicial opinions issued by courts from around the country. The process of reading and learning from a case book is different from other, more typical, course texts. Whereas the typical text book will provide the principles important to the subject in a more or less organized and digested fashion, case books provide many pages of judicial opinions that exemplify the important principles. Most of the opinions contain a great deal of information that is important to understanding the background and context of the dispute in question, but the legal principles that are important to this
The course will likely be scattered throughout the text, frequently intertwined with other legal doctrines. It is your job as the reader to extract the principles yourself, decide which are important to your inquiry, and then organize those principles into an overall framework (usually in the form of a detailed course outline).

In a similar fashion, class sessions will utilize a style of teaching known as the Socratic Method. Instead of delivering lectures in which the important themes are presented in a ready-made fashion, an instructor using Socratic Method asks questions of the students. The resulting answers help the class derive the themes that are important to the course. Needless to say, with this style of teaching preparation for class sessions is essential.

**Course Objectives:** Throughout this course, students:

1. Obtain a comprehensive understanding of:
   - The common law and constitutional bases of modern planning law;
   - The basic mechanics of how planning law is expressed in statutes, administrative regulations, and zoning and subdivision ordinances; and
   - How the various types of planning law manifest themselves in local entitlement (permitting) processes and decisions;

2. Master skills of inquiry and learning necessary to:
   - Read and understand judicial opinions, administrative regulations, and local government ordinances;
   - Extract important concepts from large volumes of information;
   - Assemble those concepts into larger constructs and systems;
   - Apply those systems in a variety of experience-based contexts and situations; and
   - Express understanding of the systems and their constituent concepts verbally and in writing.

3. Gain knowledge in how the law is expressed and implemented in the following subject areas:
   - Zoning and subdivision control;
   - Discrimination, especially in housing;
   - Smart growth and growth management; and
   - Utah zoning and planning statutes.

**Texts:** The required texts for this course are:

- *Land Use and Community Development: Cases and Materials* by Nolon, Salkin & Gitelman (7th ed., 2008; Note: this is not the most current edition, which should save you money!)
- Additional readings that will be uploaded to the course website.